

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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PATRICK TRACY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 04-CV-06541 DGL (P)
	:	
NVR, Inc.,	:	
	:	
Defendant.	:	
	:	
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DEFENDANT NVR, INC.'S VOIR DIRE INFORMATION

Of Counsel:

Lorie E. Almon
Richard L. Alfred
Barry J. Miller
James M. Hlawek (*pro hac vice*)

Local Counsel:

William G. Bauer

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New York, NY 10018

Two Seaport Lane, Suite 300
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WOODS OVIATT GILMAN LLP
700 Crossroads Building, 2 State Street
Rochester, NY 14614

Attorneys for Defendant NVR, Inc.

Defendant NVR, Inc. (“NVR”) submits the following *voir dire* information in accordance with Paragraph B(1) of the Court’s Pretrial Order dated June 14, 2013 (Dkt. 717),:

a. Short description of the case to be read to the panel

The Plaintiff in this case, Patrick Tracy, is a former employee of the Defendant in this case, NVR, Inc. Mr. Tracy worked for NVR as a Sales and Marketing Representative, also known as an “SMR.” His job was to sell new homes to NVR’s customers to be constructed in housing communities that NVR develops with its business partners.

Mr. Tracy claims that NVR owes him overtime pay under federal and New York state law for any weeks when he worked more than forty hours. NVR contends that it does not owe Mr. Tracy any overtime pay because he was the type of employee who is exempt from overtime pay requirements under federal and New York state law.

b. Name, firm name and business address of the attorneys that will be at counsel’s table for NVR

William G. Bauer
Woods Oviatt Gilman LLP
700 Crossroads Building, 2 State Street
Rochester, NY 14614

Barry J. Miller
James M. Hlawek
Seyfarth Shaw LLP
Two Seaport Lane, Suite 300
Boston, MA 02210

NVR does not anticipate having other personnel assisting in court at counsel’s table.

c. Full name and address of Defendant

NVR, Inc. d/b/a Ryan Homes
11700 Plaza America Drive
Reston, Virginia 20190

Christopher Brader, Vice President of Human Resources for NVR, will appear for some or all of the trial on behalf of NVR.

d. List of prospective witnesses for NVR

Full Name	Occupational Association	Address and Phone Number	General Subject Matter of Testimony
Christopher Brader	NVR, Inc.	11700 Plaza America Dr. Reston, Virginia 20190 703-956-4000	Responsibilities, performance expectations, and training of NVR Sales and Marketing Representatives.
Thomas E. Delaney, Jr.	NVR, Inc.	1 Fishers Road Pittsford NY 14534 (585) 419-7404	Plaintiff's responsibilities, performance expectations, and training as an NVR Sales and Marketing Representative. Plaintiff's job performance and outside sales activities.
Mark Aberi	Harmony Homes NY LLC Former NVR, Inc. employee	P.O. Box 782 Skaneateles, New York, 13152 (315) 383-1989	Plaintiff's responsibilities, performance expectations, and training as an NVR Sales and Marketing Representative. Plaintiff's job performance and outside sales activities.

e. Proposed *voir dire* questions for the Court to ask the panel**I. Knowledge of Case, Parties, and Counsel.**

1. Do you have any knowledge of this case or any of the facts in connection with it, including anything you may have read or heard from any source whatsoever, such as in a media publication or from a friend, relative, or neighbor?
2. Are you acquainted in any way with Patrick Tracy, the Plaintiff in this case, or Mr. Tracy's family or friends?
3. Have you or has anyone you know ever purchased a home from NVR, Inc. or Ryan Homes, the Defendant in this case, or had any other interaction with NVR or Ryan Homes? If so,

please explain. Did that experience give you a positive or negative feeling about NVR or Ryan Homes? Would it affect your ability to hear this case fairly?

4. Do you know anyone who is now or has been employed by NVR or Ryan Homes? If so, please state the name of any such person, your relationship with the person, when and where they were employed, and what his or her job is or was.
5. Do you know or have you ever had any dealings with any of the parties' attorneys: William Bauer, or his law firm, Woods Oviatt Gilman LLP; Barry Miller or James Hlawek, or their law firm, Seyfarth Shaw LLP; or J. Nelson Thomas or Michael Lingle, or their law firm, Thomas & Solomon LLP? If so, please describe the nature and extent of those contacts.
6. Are you acquainted in any way with the Judge in this case, Judge David G. Larimer? If so, please describe the nature and extent of your relationship with Judge Larimer.
7. Do you know or recognize any of the other prospective jurors? If so, what is the nature of your relationship with him/her?

II. Litigation History.

8. Have you, your family, or any close friends ever been personally involved in a lawsuit, either as a party, witness, or otherwise? If so, please describe the nature of the litigation and your association with it, including the type of case, whether you or the other persons identified were a plaintiff or defendant, and the outcome of the case. In general, what were your feelings about the experience? Did you believe the result was fair or unfair and why?
9. Have you, your family, or any close friend ever brought any type of charge, claim, or complaint for unpaid overtime, failure to receive minimum wage, or any other charge, claim, or complaint for unpaid compensation or wages? If so, please describe the nature of the charge, claim, or complaint.
10. Have you, your family, or any close friend ever filed a grievance, charge, complaint, lawsuit or other type of protest against an employer? If so, please state the circumstances surrounding the action, including the name of the employer, the nature of the protest, when this occurred, the outcome, and the other facts and circumstances surrounding the action.
11. Have you ever been a member of a labor union or collective bargaining unit? If so, which one? Did you consider your membership in a union to be a positive or negative one?
12. Have you ever served on a jury before? If so, please describe when, what the case was about, in which court, whether the case was a civil or criminal matter, whether you served as the foreperson, and whether a verdict was returned. Do you consider that experience to be good, bad or otherwise?

III. Other Relevant Background.

13. What county and city do you live in? How long have you lived there?
14. What is your highest level of education? If you attended college, what were your major areas of study? What degree and/or certificates have you obtained?
15. Have you or any member of your family attended law school or paralegal school or held any law or paralegal degree? Please describe.
16. Have you ever purchased a home? If so, was it a newly constructed home or a previously owned home?
17. Have you, your family, or any close friend ever worked in a sales job of any type, a position supervising an employee in a sales job, or a job that included commission compensation? If so, please describe the nature of that position.

IV. Corporations.

18. Do you feel any bias or prejudice against NVR/Ryan Homes because it is a corporation?
19. In the eyes of the law, all parties, whether individuals or corporations, are to be treated alike. All parties are entitled to the same honest, fair, and impartial treatment. If selected to serve as a juror in this case, would you accept and apply this principle of law?

V. Hardship/Fairness.

20. This trial is anticipated to last approximately 1 ½ weeks. Does this present any hardship for you?
21. Do you know of any reason why you would be unable to serve as a fair and impartial juror in this case?

Dated: September 16, 2013

Respectfully submitted,

/s/ Barry J. Miller

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Attorneys for Defendant NVR, Inc.

CERTIFICATE OF SERVICE

I certify that on September 16, 2013, I caused to be served a true and correct copy of the foregoing Defendant NVR, Inc.'s *Voir Dire* Information by filing the foregoing document through the Court's ECF system, which is configured to effect delivery by NEF on Plaintiff's counsel:

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s/Barry Miller

Barry Miller